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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

TENNYSON DENNIE, Warden Alabama State Penitentiary, Kilby, Alabama,

Respondent

BRIEF FOR PETITIONER

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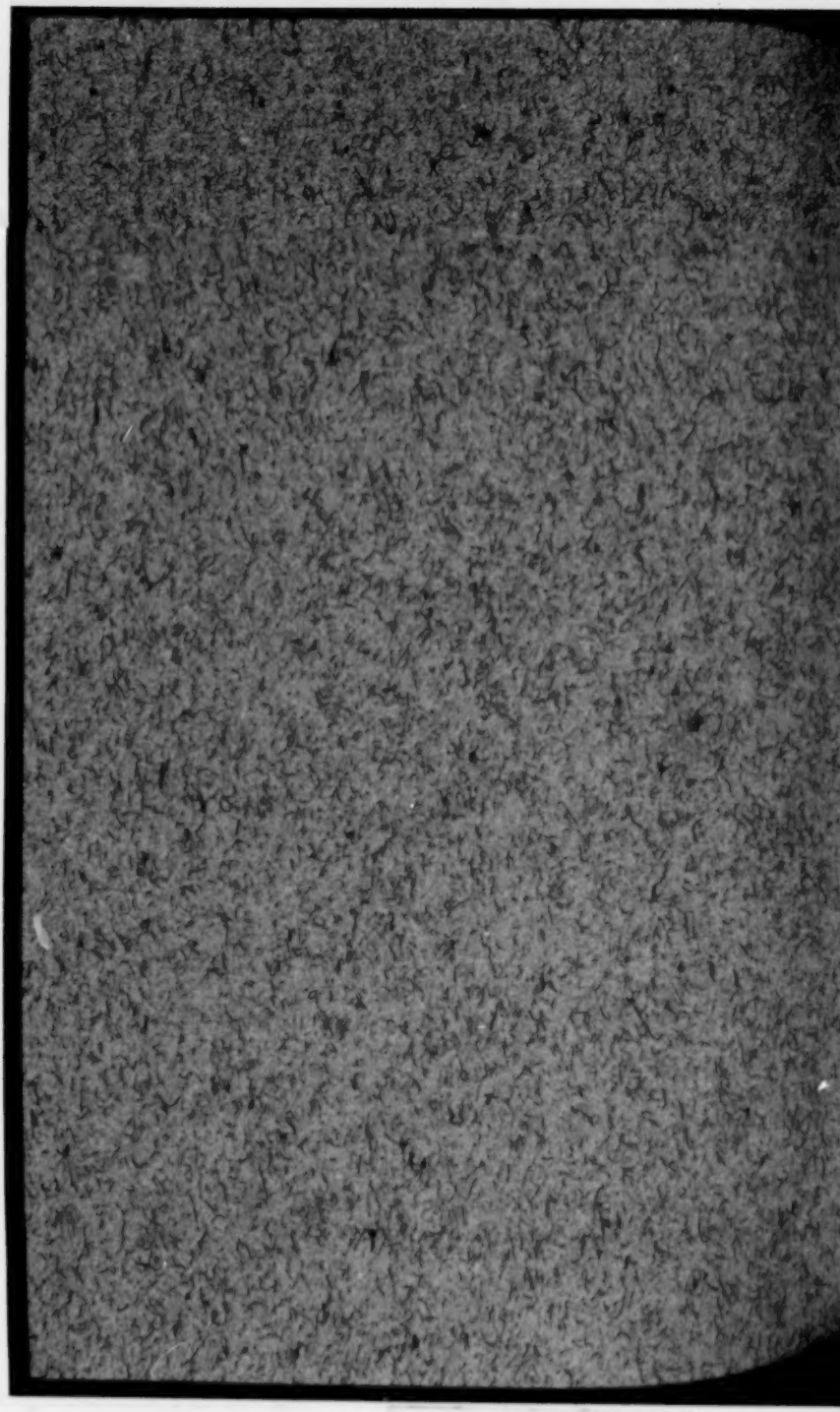

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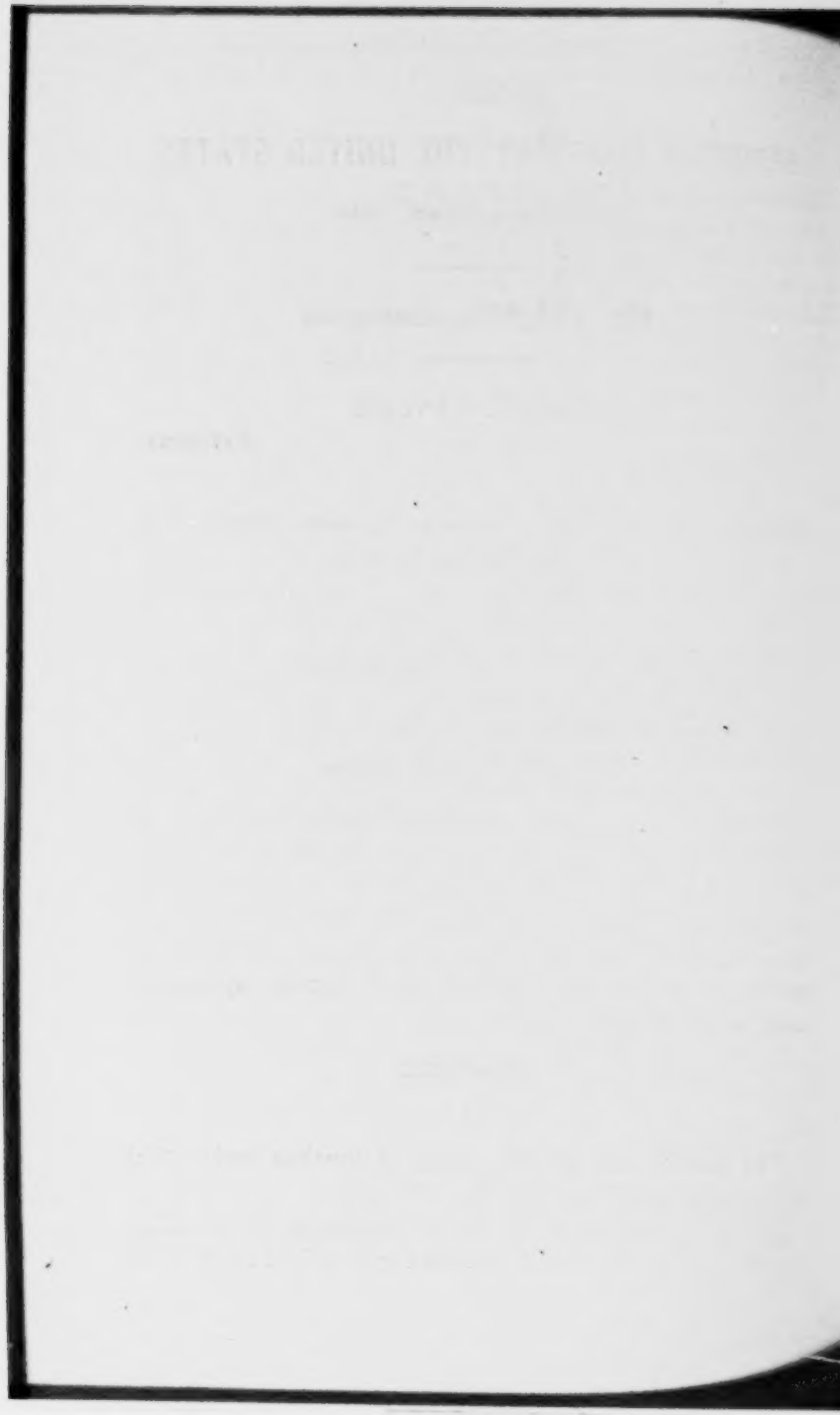

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

TENNYSON DENNIS, WARDEN ALABAMA STATE PENITENTIARY, KILBY, ALABAMA,

Respondent

BRIEF FOR PETITIONER

Opinion of Court Below

Neither the opinion of the United States District Court for the Middle District of Alabama nor the order of the United States Circuit Court of Appeals for the Fifth Circuit has been reported officially. The District Court opinion appears at pages 9 and 10 of the Record and the Order of the United States Circuit Court of Appeals appears on page 14 of the Record.

Jurisdiction

I

The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1651 (a).

The date of judgment in the United States District Court for the Middle District of Alabama is July 7, 1948 (R. 9-10).

The date of the order denying a certificate of probable cause for an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, issued by the said United States District Court, is July 17, 1948 (R. 12). The date of the order of the United States Circuit Court of Appeals for the Fifth Circuit denying a petition for a certificate of probable cause for an appeal to that court, is July 12, 1948 (R. 14). Motion for leave to file petition for writ of certiorari and petition for certiorari were duly presented to this Court on September 14, 1948 and were granted by this Court on December 13, 1948 (R. 15).

Summary Statement of Matter Involved

1. Statement of the Case

Petitioner, an ignorant Negro, nineteen years of age at the time of his trial, was convicted of the crime of rape and sentenced to death by electrocution by the Circuit Court of Mobile County, Alabama on November 19, 1946. Upon appeal, the Supreme Court of Alabama on April 24, 1947 affirmed this judgment. *Taylor* v. *State,* 249 Ala. 130, 30 So. 2d 256.

On September 18, 1947, petitioner through new counsel petitioned the Supreme Court of Alabama for permission to file a petition for writ of error *coram nobis* in the trial court. This sworn petition with supporting affidavits alleged that the conviction was based upon confessions obtained through the use of force, duress and intimidation by police officers of the state. On November 13, 1947 the petition was denied. *Ex Parte Taylor,* 249 Ala. 667, 32 So. 2d 659.

Certiorari to the Supreme Court of Alabama was granted by this Court on April 5, 1948. *Taylor* v. *Alabama,* 333 U. S. 866.

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On June 21, 1948, this Court affirmed the judgment of the Supreme Court of Alabama. *Taylor* v. *Alabama*, 335 U. S. 252.

On July 6, 1948, petitioner filed a petition for writ of habeas corpus in the District Court of the United States for the Middle District of Alabama (R. 1-5); a rule to show cause was thereupon issued to respondent (R. 5).

On July 7, 1948 respondent filed a motion to dismiss. (R. 8-9) On the same day the court dismissed the petition without requiring a return, granting a hearing or taking testimony, (R. 9-10) and immediately thereafter denied an oral motion for a certificate of probable cause (R. 12).

Subsequently, a written petition for a certificate of probable cause, addressed to the United States Circuit Court of Appeals for the 5th Circuit, filed on July 16, 1948 (R. 13) was denied by Leon McCord, one of the judges thereof (R. 14).

On July 17, 1948, petitioner filed a written motion for a certificate of probable cause in the District Court (R. 11) which was denied on that same date (R. 12).

Petition for certiorari was granted by this Court on December 13, 1948. *Taylor* v. *Dennis*, Oct. Term, 1948, No. 121 Misc., — U. S. —.

2. Statement of Facts

The facts of the case are set out in the petition for writ of habeas corpus (R. 1-5). It is therein alleged that petitioner is at the present time detained and imprisoned by Tennyson Dennis, Warden of the Alabama State Penitentiary, Kilby, Alabama, under sentence of death by electrocution by virtue of a judgment of the Circuit Court of Mobile County, Alabama, rendered on November 19, 1946, on a conviction of rape; that the said judgment and conviction was affirmed by the Supreme Court of Alabama on April 24,

1947, and reported at 30 So. (2d) 256; that petitioner was arrested by police officers of the City of Prichard, Alabama, on June 29, 1946; that he was beaten, threatened and coerced by said officers for a period of three days until he made a confession to a rape charge; that said confession was later introduced in evidence on the trial of his case in the Circuit Court of Mobile County, Alabama, but that due to ignorance of his rights and the fear of reprisals in which he was placed by the threats of these police officers, he failed to mention the coerced nature of said confession to his attorney, who was first appointed to represent him at said trial, and that consequently no evidence as to the involuntary nature of said confession was introduced on his behalf in said trial.

The petitioner further alleged that after his conviction and the affirmance of the judgment of conviction as aforesaid, petitioner's family employed new counsel to represent him, which counsel discovered evidence as to the involuntary nature of said confession and on the basis thereof filed in the Supreme Court of Alabama a petition for leave to file a petition for a writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama, to inquire into the involuntary nature of said confession; that on the 13th day of November, 1947, the Supreme Court of Alabama (one justice dissenting) denied said petition, and further denied without opinion an application for rehearing on December 4, 1947 (*Ex Parte Taylor*, 249 Ala. 667, 32 So. 2d 659). The petition alleged that subsequently, petitioner filed a timely application to this Court for certiorari claiming that due process of law had been denied him by virtue of the decision of the Supreme Court of Alabama in refusing permission to petitioner to file for a writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama; that certiorari was granted on April 5, 1948 (*Taylor* v. *Alabama*, 333 U. S. 866); that on June 21, 1948, this Court affirmed

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the judgment of the Supreme Court of Alabama, holding that petitioner's rights to due process of law had not been violated by the action of the Supreme Court of the State of Alabama (*Taylor* v. *Alabama*, 335 U. S. 252).

In spite of the uncontroverted allegations of the petition for habeas corpus, the District Court dismissed said petition without requiring a return or a hearing. Petitioner has exhausted all of the judicial remedies available to him, both in the Alabama courts and in the lower United States courts, and has not yet obtained a hearing on the allegations set forth in his petition for writ of habeas corpus.

Question Presented

IS A FEDERAL DISTRICT COURT JUSTIFIED, AFTER ISSUING A RULE TO SHOW CAUSE, IN DISMISSING AN UNCONTROVERTED PETITION FOR HABEAS CORPUS IN THE ABSENCE OF AN ANSWER OR A HEARING, WHICH PETITION SUFFICIENTLY ALLEGES DEPRIVATION BY A STATE CRIMINAL COURT OF PETITIONER'S CONSTITUTIONAL RIGHTS, ON THE GROUNDS THAT THE FACTS AS ALLEGED THEREIN WERE PREVIOUSLY HELD BY THE STATE'S HIGHEST COURT TO BE INSUFFICIENT TO INVOKE CORAM NOBIS, THE ONLY AVAILABLE STATE REMEDY, AND THAT THIS COURT FOUND THAT SUCH REFUSAL TO GRANT CORAM NOBIS WAS NOT A DENIAL OF DUE PROCESS?

Errors Relied Upon

I

The Federal District Court erred in dismissing the uncontroverted petition for habeas corpus.

II

The Federal District Court erred in holding that a hearing on the habeas corpus petition was not required by the United States Constitution because:

A. The same issues were inquired into by the Supreme Court of Alabama on *coram nobis* proceedings and were there found legally insufficient to warrant relief; and

B. This Court, on certiorari, found that the proceedings in the Alabama Supreme Court on petitioner's *coram nobis* application were in compliance with due process.

III

The Federal District Court and the Circuit Court of Appeals erred in refusing to issue a certificate of probable cause.

Outline of Argument

I

Use by a state of a coerced confession to obtain a conviction for a crime is a violation of the due process clause of the Fourteenth Amendment.

Lee v. *Mississippi*, 332 U. S. 722;
Haley v. *Ohio*, 332 U. S. 596;
Malinski v. *New York*, 324 U. S. 401;
Ashcraft v. *Tennessee*, 322 U. S. 143;
Ward v. *Texas*, 316 U. S. 547;
Lisenba v. *California*, 314 U. S. 219;
Vernon v. *Alabama*, 313 U. S. 547;
White v. *Texas*, 310 U. S. 530;
Chambers v. *Florida*, 309 U. S. 227;
Brown v. *Mississippi*, 313 U. S. 547.

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II

A habeas corpus proceeding in the Federal District Court is the proper method of attacking a conviction obtained in a state court in violation of defendant's constitutional rights, after the exhaustion of state remedies.

White v. *Ragen*, 324 U. S. 760;
Wade v. *Mayo*, 332 U. S. 672.
House v. *Mayo*, 324 U. S. 42;
Ex parte Hawk, 321 U. S. 114;
Mooney v. *Holohan*, 294 U. S. 103;
Title 28, United States Code, Sections 2241-2255.

III

The allegations of a petition for habeas corpus in Federal courts must be taken as true in the absence of an answer or a hearing.

White v. *Ragen*, 324 U. S. 760;
House v. *Mayo*, 324 U. S. 42;
Williams v. *Kaiser*, 323 U. S. 471;
U. S. v. *Adams*, 320 U. S. 220.

IV

The Federal District Court is under the duty to forthwith award the writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto.

Holiday v. *Johnston*, 313 U. S. 342;
Price v. *Johnston*, 334 U. S. 266;
Von Moltke v. *Gillies*, 332 U. S. 708;
Marino v. *Ragen*, 332 U. S. 561;
U. S. v. *Adams*, 320 U. S. 220;
Ex parte Quirin, 317 U. S. 1;
Walker v. *Johnston*, 312 U. S. 275;
Title 28, United States Code, section 2243 (then, 28 U. S. C. #461).

V

The prior proceedings in this case did not relieve the District Court of its duty to afford petitioner a hearing on the allegations of the petition for habeas corpus.

House v. Mayo, 324 U. S. 42;
Waley v. *Johnston*, 316 U. S. 101.

VI

This Court has jurisdiction to review by certiorari the action of the lower Federal courts in declining leave to appeal in this case and such review extends to questions on the merits sought to be raised by the appeal.

Title 28, United States Code, section 1651 (a);
House v. *Mayo*, 324 U. S. 42;
Re 620 Church St. Building Corp., 299 U. S. 24;
Steffler v. *U. S.*, 319 U. S. 38;
Wells v. *U. S.*, 318 U. S. 257;
Holiday v. *Johnston*, 313 U. S. 342.

Argument

I

USE BY A STATE OF A COERCED CONFESSION TO OBTAIN A CONVICTION FOR A CRIME IS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

A conviction based in whole or in part upon a confession obtained through fear, intimidation or duress deprives a defendant of due process of law guaranteed by the United States Constitution.[1] This principle has been reiterated by

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[1] *Lee* v. *Mississippi*, 332 U. S. 772; *Haley* v. *Ohio*, 332 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Chambers* v. *Florida*, 309 U. S. 227.

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this Court in a long line of cases,[2] and is applicable both to convictions in state [3] and Federal courts,[4] whether the coercion was physical or mental.[5]

The petition for writ of *habeas corpus* herein set out in detail the facts and circumstances surrounding the obtaining of an involuntary confession from petitioner which was subsequently used as the basis of his conviction (R. 1-5). These facts, if true, set out a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.[6]

II

A HABEAS CORPUS PROCEEDING IN THE FEDERAL DISTRICT COURT IS THE PROPER METHOD OF ATTACKING A CONVICTION OBTAINED IN A STATE COURT IN VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS, AFTER THE EXHAUSTION OF STATE REMEDIES

Since *Frank* v. *Mangum*, 237 U. S. 309, this Court has recognized that *habeas corpus* in the federal courts is necessary "to safeguard the liberty of all persons within the jurisdiction of the United States against infringement through any violation of the Constitution," even though the events alleged to infringe do not appear upon the face of the record of conviction.[7]

Power to issue writs of *habeas corpus* have been con-

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[2] *Lee* v. *Mississippi, supra; Haley* v. *Ohio, supra; Malinski* v. *New York, supra; Ashcraft* v. *Tennessee*, 322 U. S. 143; *Ward* v. *Texas*, 316 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Vernon* v. *Alabama*, 313 U. S. 547; *White* v. *Texas*, 310 U. S. 530; *Brown* v. *Mississippi*, 313 U. S. 547.

[3] See footnote 2, *supra*.

[4] *Anderson* v. *United States*, 318 U. S. 350; *McNabb* v. *United States*, 318 U. S. 332.

[5] *Anderson* v. *United States*, 318 U. S. 350; *McNabb* v. *United States, supra; Ward* v. *Texas, supra*.

[6] *Chambers* v. *Florida, supra*.

[7] *Mooney* v. *Holohan*, 294 U. S. 103.

ferred upon the federal courts by statute,[8] and includes the authority to issue the writ where petitioner is detained by state authority in violation of his constitutional rights. This Court has limited this authority by holding that resort to federal courts for the writ, except in extraordinary circumstances,[9] may be had only if all state remedies have been exhausted.[10] Where such state remedies have been pursued to no avail, however, the defendant may petition the federal court for *habeas corpus* relief, where he makes a substantial showing of violation of his constitutional rights by a state court.[11]

In the instant case, petitioner previously applied to the Supreme Court of Alabama for leave to file a petition for writ of *coram nobis* in the state trial court, setting up in his application specific details surrounding the making of an alleged confession which was used by the state to obtain his conviction in the trial court. The Alabama Supreme Court denied the permission sought and upon certiorari this Court found that the action of the Alabama Supreme Court was not in violation of the due process clause of the Fourteenth Amendment. Petitioner, thus had exhausted to no avail the only state remedy provided by Alabama procedure and accordingly presented his petition for *habeas corpus* in the District Court of the United States for the Middle District of Alabama.

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[8] Title 28 United States Code, sections 2241-2255.

[9] *Moore* v. *Dempsey*, 261 U. S. 86.

[10] *White* v. *Ragen*, 324 U. S. 760; *House* v. *Mayo*, 324 U. S. 42; *Ex parte Hawk*, 321 U. S. 114; *Mooney* v. *Holohan*, *supra*.

[11] *Wade* v. *Mayo*, 332 U. S. 672.

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III

THE ALLEGATIONS OF A PETITION FOR HABEAS CORPUS IN FEDERAL COURTS MUST BE TAKEN AS TRUE IN THE ABSENCE OF AN ANSWER OR A HEARING

In the instant case, the Federal District Court dismissed the petition for *habeas corpus* without requiring an answer and without a hearing. Upon the issuance of its rule to show cause, the Attorney General of the State of Alabama, acting for the respondent filed a pleading characterized by the district court as a "motion to dismiss" the petition (R. 12). In view of this, therefore, as stated by this Court in the case of *House* v. *Mayo:* "Since the petition for *habeas corpus* was denied without requiring respondent to answer and without a hearing, we must assume that the petitioner's allegations are true." [12]

IV

THE FEDERAL DISTRICT COURT IS UNDER THE DUTY TO FORTHWITH AWARD THE WRIT OF HABEAS CORPUS, UNLESS IT APPEARS FROM THE PETITION ITSELF THAT THE PARTY IS NOT ENTITLED THERETO

The act of the District Judge in issuing an order to show cause to the Attorney General of the State of Alabama and in thereafter dismissing the petition without an answer or a hearing thereon constituted reversible error.

The statutes controlling the procedure to be followed upon the filing of a petition for *habeas corpus* at the time of the commencement of the present proceedings were

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[12] 324 U. S. 42, 45; see also: *White* v. *Ragen, supra; House* v. *Mayo, supra; Williams* v. *Kaiser,* 323 U. S. 471; *U. S.* v. *Adams,* 320 U. S. 220.

found in Title 28, U. S. C., Section 455 and Section 461, which provided:

> "Allowance and Direction. The Court, or Judge to whom such application is made shall forthwith award a writ of habeas corpus, *unless it appears from the petition itself that the party is not entitled thereto* . . .
> "Summary Hearing; Disposition of a Party. *The Court, or Justice or Judge shall proceed* in a summary way *to determine the facts of the* case *by hearing the testimony* and arguments, and thereupon to dispose of the party as law and justice require." (Italics ours.) [13]

It thus appears that, although the Judge to whom the writ is presented may justifiably refuse to issue the writ or to issue an order to show cause if it appears from the petition itself that the party is not entitled thereto, once he decides to exercise jurisdiction by ordering the respondent to show cause, he adjudges that the petition is sufficient.[14] Having made such judicial determination, the Court was, accordingly, under the duty to require a return or an answer to the order, for the purpose of ascertaining whether or not issues of fact were involved, and, if such issues were found, to hold a hearing thereon and dispose of the case as law and justice require.

In the case of *Walker* v. *Johnston*, 312 U. S. 275, an order

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[13] Cf. new Title 28, United States Code, Section 2243: "A Court, Justice or Judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. . . .

"The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. . . .

"The Court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."

[14] *Holiday* v. *Johnston*, 313 U. S. 342, where the Court stated: "In the present instance, moreover, the Judge, by calling on the respondent to show cause, adjudged that in his view the petition was sufficient. . . ."

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to show cause was issued to the respondent after the petition for writ had been presented. The respondent filed an answer with supporting affidavits and the Court proceeded thereupon to dispose of the case upon the petition and answer. This Court, upon review, after setting forth that the only acceptable procedure under the statute was to grant the petitioner a hearing on the facts once the Court had decided to entertain the petition, stated:

> "Nothing less (than a hearing) will satisfy the command of the statute that the Judge proceed 'to determine the facts of the case by hearing the testimony and arguments' " (312 U. S. 285).

This Court further said, in commenting upon the failure of the District Judge to grant petitioner a hearing in that case:

> "The Government properly conceived that if the petition, the return and the traverse raise substantial issues of fact, it is the petitioner's right to have those issues heard and determined in the manner the statutes prescribe" (312 U. S. 286).

The District Judge, herein by issuing the rule to show cause, indicated his determination that the petition was sufficient; accordingly, his own judicial act shows that this case does not come within the exception of Title 28, U. S. C., Section 555,[15] providing that the writ shall forthwith be awarded "unless it appears from the petition itself that the party is not entitled thereto." The respondent, instead of filing an answer denying the allegations of fact in the petition, or of filing a return setting out the true cause of the detention, filed his pleading making a special appearance "without admitting even for the purpose of argument the allegations of the petition" (R. 8-9). The District Judge, therefore, did not have discretion to refuse to issue the writ, or to

[15] Presently Title 28, United States Code, Section 2243.

require an answer to the order to show cause or to hold a hearing on the merits of the uncontroverted petition, after having found it was sufficient to justify the issuance of the order to show cause.

V

THE PRIOR PROCEEDINGS IN THIS CASE DID NOT RELIEVE THE DISTRICT COURT OF ITS DUTY TO AFFORD PETITIONER A HEARING ON THE ALLEGATIONS OF THE PETITION FOR HABEAS CORPUS

In its order granting respondent's motion to dismiss the petition for writ of *habeas corpus* filed herein, the District Judge stated the following reason for his action.

> "The court is of the opinion that the identical issues sought to be raised by the allegations of the petition have been raised in the Supreme Court of Alabama in coram nobis proceedings by this petitioner; the court further finds that those issues were inquired into by the Supreme Court of Alabama and for reasons and upon proof satisfactory to the State Supreme Court relief was denied to the petitioner; further that the said judgment of the Supreme Court of Alabama was affirmed by the Supreme Court of the United States, and said United States Supreme Court having found that the remedy afforded petitioner in the State Supreme Court was in compliance with the Fourteenth Amendment to the United States Constitution,
>
> "In the exercise of its discretion to grant or refuse the writ of habeas corpus, this court has given weight to the judgments, opinions, and the matters referred to in the opinions of the Supreme Court of Alabama and of the United States Supreme Court in this case, and this court is of the opinion that in view of said opinions and judgments, and the history of said case that a further hearing is not required by the Constitution of the United States" (R. 9-10).

Actually, neither in the *coram nobis* proceedings in the Supreme Court of Alabama, nor in the review of said pro-

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ceedings by the United States Supreme Court has there been a hearing and determination of the issues sought to be raised in the *habeas corpus* petition before the District Court.

In the *coram nobis* proceedings in the Supreme Court of Alabama, the petitioner sought leave to file the said petition for writ of error *coram nobis* in the trial court to inquire into the legality of his conviction on the grounds that his trial, conviction and sentence in said trial court were based upon an alleged confession obtained from him by the use of force, fear and intimidation threatened and inflicted upon him and that, by reason of fear occasioned by threats made against him, he did not inform his attorney first appointed by the court of the involuntary nature of the said alleged confession, nor did he object to its introduction in evidence at the trial. This petition was supported by affidavits which were attached and submitted therewith.

The State of Alabama moved to dismiss the petition, attaching affidavits and exhibits to this motion. The Supreme Court of Alabama, one justice dissenting, without hearing denied leave to file the petition.

Although the Supreme Court of Alabama considered and analyzed the affidavits and exhibits submitted by petitioner and the State in denying the application for leave to file the petition for writ of error *coram nobis*, the petitioner was never afforded a hearing upon the issues which would have been raised if leave had been granted to file in the trial court.

It was error for the District Court herein to measure the availability of *habeas corpus* under federal procedure by the same standards as were applied to *coram nobis* by the Alabama Supreme Court. The *coram nobis* petition was denied by the Alabama Supreme Court on two grounds: (1) that the allegations thereof lacked the probability of

truth,[16] and (2) that the evidence apart from the alleged coerced confession was sufficient to sustain the conviction and that petitioner had presented no meritorious defense thereto.[17] In commenting upon the requirements for *coram nobis*, the Alabama Supreme Court, after discussing the fact that petitioner's conviction had not rested alone upon the alleged coerced confession stated:

> "The court should also bear in mind this writ is only due to be granted where it is made clearly to appear that petitioner has a valid defense."[18]

Clearly, no such strict requirements are necessary for relief by *habeas corpus* in a federal court and the giving of "controlling weight" to the judgment and opinion of the Supreme Court of Alabama was reversible error. As stated by this Court in a recent case: "Habeas corpus is presently available for use by a district court within its recognized jurisdiction *whenever necessary* to prevent an unjust and illegal deprivation of human liberty." (Italics ours.)[19]

This Court in its review of the decision of the Supreme Court of Alabama, specifically refrained from adjudicating the merits of petitioner's case. The Court stated in its opinion: "The question in this case is whether the State of Alabama deprived the petitioner of due process of law . . .

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[16] *Ex parte Taylor*, 249 Ala. 667, 32 So. 2d 659; *cf. Waley* v. *Johnston*, 316 U. S. 101, 104, where this Court said: "True, petitioner's allegations in the circumstances of this case may tax credulity. But in view of their specific nature, . . . and the failure of respondent to deny . . . them specifically, we cannot say that the issue was not one calling for a hearing within the principles laid down in *Walker* v. *Johnston*, 312 U. S. 275, 85 L. Ed. 830, 61 S. Ct. 574. . . . If the allegations are found to be true, petitioner's constitutional rights were infringed."

[17] *Cf. Malinski* v. *New York*, *supra*, and authorities cited under Point I.

[18] *Ex parte Taylor*, *supra*.

[19] *Wade* v. *Mayo*, *supra*.

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when the Supreme Court of that State denied him permission to file a petition for writ of error coram nobis" (*Taylor* v. *Alabama*, 335 U. S. 252).

A close analysis of the majority opinion reveals that the Court was concerned primarily with two questions. First, whether or not Alabama procedure for *coram nobis* constituted due process of law under the Fourteenth Amendment and the case of *Mooney* v. *Holohan, supra;* and second, whether or not the denial of the petition by the Alabama court constituted such an arbitrary action as to amount to a deprivation of due process.

In its opinion, this Court discussed the merits of petitioner's claims but it is important to note that this discussion was for the sole purpose of ascertaining whether or not the Alabama Supreme Court's action was arbitrary. Immediately prior to discussing the merits, this Court stated:

> "The issue before us is not the issue which would have faced the trial court in the event that the Supreme Court of Alabama had granted permission to the petitioner to file his petition for writ of error coram nobis in that court. The proceeding here is not even a review de novo, of the merits of the request made to the Supreme Court of Alabama. The issue before us is limited to a determination of whether, under all the circumstances, the action of the Supreme Court of Alabama . . . not merely had committed error but had deprived the petitioner of life or liberty without due process of law" (*Taylor* v. *Alabama*, 335 U. S. 252, 261-262).

The Court then proceeded to discuss the merits of the petition for the purposes set forth above. Immediately following its discussion of the merits, the Court stated: "For these reasons we conclude . . . that the denial by the Supreme Court of Alabama of the permission thus sought by the petitioner . . . was not, under all the

circumstances, such an arbitrary action as in itself to amount to a deprivation of due process of law."

This analysis of the Court's opinion is substantiated by the concurring opinion by Mr. Justice Frankfurter who stated that since he cannot deem the Alabama court's mode of reasoning as "unsustainable in reason," he is not entitled to reject it and therefore agrees with the majority opinion. But he further stated: "There is not now before us any right that the petitioner may have under the Judicial Code to bring an independent habeas corpus proceeding in the District Court of the United States."

The dissenting opinion by Mr. Justice Murphy also substantiated the analysis of the majority opinion and concluded with this observation:

> "Fortunately, this Court has not yet made a final and conclusive answer to petitioner's claim. All that has been decided here is that the Supreme Court of Alabama did not err in declining to permit him to file a petition for writ of error coram nobis in the Alabama courts. Nothing has been held which prejudices petitioner's right to proceed by way of habeas corpus in a federal district court now that he has exhausted his state remedies. He may yet obtain the hearing which Alabama has denied him" (335 U. S. 279-280).

The aspects of the present petition were not unlike those in the case of *Waley* v. *Johnston*,[20] where this court on certiorari reviewed a district court's denial of a writ for habeas corpus on the ground that an earlier decision of the trial court denying petitioner's application for a writ of *coram nobis* was *res judicata;* this Court stated in its opinion:

> "The earlier application was denied for insufficiency upon its face and without a hearing. There is thus no basis for the holding of the district court that the

[20] 316 U. S. 101.

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denial is res judicata of the present petition." (316 U. S. 101, 105)

As argued above the Alabama Supreme Court denied petitioner's *coram nobis* application because of its insufficiency upon its face and without a hearing. Consequently, the present case comes within the principle thus laid down in the *Waley* case.

In *House* v. *Mayo*, 324 U. S. 42, the procedural issues involved were substantially the same as those here presented. There, as here, the district court was of the opinion that "petitioner has had a full, complete, and competent consideration and decision in the Supreme Court of Florida of all the various matters here sought again to be presented," and was of the opinion that a denial by this Court of a petition for certiorari, filed here after the denial by the Florida Supreme Court of one of the applications for habeas corpus was an expression "of the opinion that no meritorious question is presented by the matters of which petitioner here complains."

This Court puts its decision in the *House* case, granting certiorari, reversing the order of the Court of Appeals and judgment of the District Court, and remanding the case to the District Court, upon the following grounds:

> "But as we have often said, a denial of certiorari by this Court imports no expression of opinion upon the merits of a case. (Cases cited) It is true that where a state court has considered and adjudicated the merits of a petitioner's contentions, and this Court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated. (cases cited) But that rule is inapplicable where, as here, the basis of the state court decision is that the particular remedy sought is not one allowed by state law, for in such a case this Court lacks jurisdiction to review the decision (cases cited)"

In the instant case we submit that the rule stated above also is inapplicable in that, by its denial of the *coram nobis* proceedings, the Supreme Court of Alabama made unavailable to petitioner a consideration and adjudication of the merits of his contentions. Such a consideration and adjudication could be afforded only by the hearing and determination in the trial court of the merits of petitioner's allegations, which hearing and determination became unavailable to petitioner by denial of his application for *coram nobis* proceedings.

Further, it would appear that this Court's previous judgment in the instant case, contrary to the effect imputed to it by the District Court, specifically removed the case from application of the rule when it stated: "The issue before us is not the issue which would have faced the trial court in the event that the Supreme Court of Alabama had granted permission to the petitioner to file his petition for writ of error coram nobis in that court. The proceeding here is not even a review, de novo, of the merits of the request made to the Supreme Court of Alabama."

Therefore, we conclude, as did this Court in the *House* case:

> "The decision of the district court is thus not supported by the grounds assigned for it, and should have been reversed by the court of appeals."[21]

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[21] 324 U. S. 42, 48.

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VI

THIS COURT HAS JURISDICTION TO REVIEW BY CERTIORARI THE ACTION OF THE LOWER FEDERAL COURTS IN DECLINING LEAVE TO APPEAL IN THIS CASE AND SUCH REVIEW EXTENDS TO QUESTIONS ON THE MERITS SOUGHT TO BE RAISED BY THE APPEAL

In view of the errors committed by the Federal District Court herein, the Circuit Court of Appeals and the District Court were under an obligation to issue to petitioner a certificate that probable cause for an appeal exists. Both courts refused such certificate (R. 12, 14) and this refusal may properly be reviewed by this Court upon certiorari.

Title 28 United States Code, section 1651(a)[22] provides in part that this Court may issue "all writs necessary or appropriate" in aid of its jurisdiction. In interpreting this provision, this Court has held that it extends to a review of lower federal court proceedings of the type that obtained in this case.[23]

In the case of *House* v. *Mayo, supra,* a petition for habeas corpus in the United States District Court was denied without a return or a hearing and a certificate of probable cause for an appeal to the Circuit Court of Appeals was likewise denied both by the district and circuit courts. Petitioner thereafter applied to this Court for writ of certiorari to review the action of the lower federal courts. This Court, under section 262 of the United States Code[24] granted a writ of certiorari to review the action of the Court of Appeals in declining to allow an appeal to it. This Court stated that their review extended not only to a determina-

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[22] Formerly 28 United States Code, section 262.

[23] *House* v. *Mayo, supra; Re 620 Church St. Building Corp.,* 299 U. S. 24; *Stefflер* v. *U. S.,* 319 U. S. 38; *Wells* v. *U. S.,* 318 U. S. 257; *Holiday* v. *Johnston,* 313 U. S. 342.

[24] Presently Title 28 United States Code, section 16518.

tion of whether the Circuit Court of Appeals abused its discretion in refusing to allow the appeal but extended also to "questions on the merits sought to be raised by the appeal."[25]

The procedure in the instant case was substantially identical with that in the *House* case and accordingly the present proceedings are within the jurisdiction of this Court.

Conclusion

To date, petitioner has unsuccessfully sought a hearing at which he could present evidence in support of his contentions that his conviction and detention are in violation of the Federal Constitution. As required by the procedure in the Federal courts, he exhausted all state remedies available to him without securing a hearing. This Court reviewed the procedure by which petitioner had unsuccessfully sought a hearing and found that the procedure did not violate the Fourteenth Amendment. The United States District Court has, by an ironic twist of reasoning, found that the very procedures which the petitioner was required to follow before applying to the District Court for a writ of habeas corpus have deprived petitioner of his right to a hearing in the federal courts.

The record is plain that petitioner has had no hearing on the merits and whatever the pre-conceived notion of the District Judge as to the validity of petitioner's contentions, no prior refusal of a state court to grant petitioner a hearing upon the same issue could relieve the District Court of its duty to inquire into the merits for itself.

This Court must once more reaffirm the fundamental role of the writ of habeas corpus in the scheme of human liberty by establishing that a federal district court may not refuse

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[25] *House* v. *Mayo, supra, Holiday* v. *Johnston, supra, Stefler* v. *U. S.*

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to make an independent investigation into the merits of a petition with the excuse that a state court has found the claim of right so insubstantial as not to require a hearing.

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